



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0895]

RIN 1625-AA00

Safety Zone; Potomac River, Between Charles County, MD and King George County, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of life on these navigable waters at the old Governor Harry W. Nice / Senator Thomas “Mac” Middleton Memorial (US-301) Bridge during demolition operations from March 13, 2023 through March 29, 2023. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 12:01 a.m., March 13, 2023 through 11:59 p.m., March 29, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0895 in the search box and click "Search." Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Courtney Perry, Sector Maryland-NCR, Waterways Management

Division, U.S. Coast Guard: telephone 410-576-2596, email

MDNCRWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Skanska-Corman-McLean, Joint Venture notified the Coast Guard that it will be conducting demolition of the old Governor Harry W. Nice / Senator Thomas “Mac” Middleton Memorial (US-301) Bridge. Although the original notice provided a different set of dates, the demolition is now set to occur from 12:01 a.m. on March 13, 2023 to 11:59 p.m. on March 29, 2023. The bridge is located on the Potomac River, at mile 43.3, between Charles County, MD and King George County, VA. Demolition of the segment of the old bridge over waters that include the steel truss sections between Piers 7 and 13 (including the main span over the Federal navigational channel) requires the use of explosives, and debris removal and hydrographic surveying equipment.

In response to information originally provided by the demolition contractor, on November 8, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Potomac River, Between Charles County, MD and King George County, VA (87 FR 67430). The NPRM indicated that the safety zone would occur from February 1, 2023 through February 17, 2023, stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this demolition. During the comment period that ended December 8, 2022, we received 3 comments. A fourth comment was received on December 9, 2022 from the demolition contractor that

prompted the Coast Guard to publish a Supplemental NPRM (SNPRM) indicating that the safety zone would occur from March 1, 2023 through March 17, 2023, and to the west of the Federal channel. During the comment period for the SNPRM, a fifth comment was received on January 26, 2023 from the demolition contractor indicating that the demolition work would occur between March 13, 2023 and March 29, 2023, the dates used in this Temporary Final Rule.

On February 17, 2023, the demolition contractor notified the Coast Guard that they were requesting traffic to be halted in the area originally identified and along the Federal channel, as well, for brief periods (during actual detonations) for safety reasons. In response, we are promulgating this final regulation to include an “Area 3” which will encompass the entire Federal channel. This “Area 3” will only be enforced on one day in between March 13, 2023 and March 29, 2023, for a short duration with law enforcement assets on scene.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication of the final dates and areas in the Federal Register. Delaying the effective date of this rule to provide notice of changes necessitated by changes in the demolition contractor’s actual plans would be impracticable because immediate action is needed to respond to the potential safety hazards associated with explosive demolition of the bridge.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated the demolition and removal of the old Governor Harry W. Nice / Senator Thomas “Mac” Middleton Memorial (US-301) Bridge would be a safety concern for anyone within or near the Federal navigation channel. The purpose of this rule is to ensure safety of vessels and the navigable waters within or near the Federal

navigation channel at the old Governor Harry W. Nice / Senator Thomas “Mac”

Middleton Memorial (US-301) Bridge before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 4 comments on our NPRM published November 8, 2022 as well as 1 more comment following the SNPRM published January 3, 2023. Three comments expressed support of the rulemaking and the Coast Guard concurs. Two comments were submitted by the demolition contractor requesting changes to the proposed rule. The first comment submitted from the demolition contractor was to inform the Coast Guard that there had been a change to the scheduled date and location sequence in which the demolition will occur. The second comment submitted from the demolition contractor was noted that the portion of the bridge to be demolished is between Pier 7 and Pier 13, and not Pier 8 and Pier 13 as initially described. Additionally, the commenter indicated that the demolition will occur on March 13, 2023 through March 29, 2023 rather than March 1, 2023 through March 17, 2023. We confirmed this updated information with the demolition contractor and have revised the regulatory text to reflect these changes.

This rule establishes a safety zone from 12:01 a.m. on March 13, 2023, to 11:59 p.m. on March 29, 2023. The safety zone will cover the following areas:

Area 1. All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'51.57" N, 076°59'14.53" W, thence south to 38°21'41.35" N, 076°59'12.33" W, thence west to 38°21'37.90" N, 076°59'38.25" W, thence north to 38°21'48.14" N, 076°59'40.45" W, and east back to the beginning point, located between Charles County, MD and King George County, VA.

Area 2. All navigable waters of the Potomac River, within 1,500 feet of the explosives barge located in approximate position 38°21'21.47" N, 076°59'45.40" W.

Area 3. All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'48.14" N, 076°59'40.45" W, thence south to 38°21'37.90" N, 076°59'38.25", thence west to 38°21'41.40" N, 076°59'22.80" W, thence north to 38°21'51.00" N, 076°59'22.80" W, and east back to the beginning point, located between Charles County, MD and King George County, VA.

The duration of the zone is intended to ensure the safety of the vessels and these navigable waters before, during, and after the scheduled demolition and debris removal. Except for the marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The term designated representative also includes an employee or contractor of Skanska-Corman-McLean, Joint Venture for the sole purpose of designating and establishing safe transit corridors, to permit passage into or through the safety zone, or to notify vessels and individuals that they have entered the safety zone and are required to leave.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, in accordance with 33 CFR 165.7(a). Such means of notification will include, but are not limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 and 46 U.S.C. 70052.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location and time of year of the safety zone. The temporary safety zone is approximately 1200 yards in width and 350 yards in length. This safety zone will impact a small designated area of the Potomac River for 17 total days, but we anticipate that there would be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted, but bridge project personnel have been conducting outreach throughout the project in order to coordinate with those vessels. This safety zone will be established outside the normal recreational boating season for this area, which occurs during the summer season. Additionally, vessel traffic, including recreational vessels, not required to use the navigational channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the east or the west of the Federal navigation channel, as similar vertical clearance and water depth exist under the next bridge span to the east and west. Moreover, the Coast Guard will issue Local Notice to Mariners and a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this

rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have

determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 17 days that will prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T05-0895 to read as follows:

§ 165.T05-0895 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

(a) *Location.* The following areas are a safety zone: These coordinates are based on datum NAD 83.

(1) *Area 1.* All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'48.14" N, 076°59'40.45" W, thence south to 38°21'37.90" N, 076°59'38.25" W, thence west to 38°21'35.18" N, 076°59'59.06" W, thence north to 38°21'45.57" N, 077°00'01.84" W, and east back to the beginning point, located between Charles County, MD and King George County, VA.

- (2) *Area 2.* All navigable waters of the Potomac River within 1,500 feet of the

explosives barge located in approximate position 38°21'21.47" N, 076°59'45.40" W.

(3) *Area 3.* All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21'48.14" N, 076°59'40.45" W, thence south to 38°21'37.90" N, 076°59'38.25", thence west to 38°21'41.40" N, 076°59'22.80" W, thence north to 38°21'51.00" N, 076°59'22.80" W, and east back to the beginning point, located between Charles County, MD and King George County, VA.

(b) *Definitions.* As used in this section---

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone. The term also includes an employee or contractor of Skanska-Corman-McLean, Joint Venture for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through the safety zone, or to notify vessels and individuals that they have entered the safety zone and are required to leave.

Marine equipment means any vessel, barge or other equipment operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, except for marine equipment, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP, Skanska-Corman-McLean, Joint Venture, or the COTP's designated representative. If a vessel or person is notified by the COTP, Skanska-Corman-McLean, Joint Venture, or the COTP's designated representative that they have entered the safety zone without permission, they are required to immediately leave in a safe manner following the directions given.

(2) Mariners requesting to transit any of these safety zone areas must first contact the Skanska-Corman-McLean, Joint Venture designated representative, the on-site project manager by telephone number 785-953-1465 or on Marine Band Radio VHF-FM channels 13 and 16 from the pusher tug Miss Stacy. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, Skanska-Corman-McLean, Joint Venture, or designated representative to the mariner regarding the conditions of entry to and exit from any area of the safety zone. The COTP or the COTP's representative can be contacted by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcasts on VHF-FM marine band radio announcing specific enforcement dates and times.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 12:01 a.m. on March 13, 2023, to 11:59 p.m. on March 29, 2023.

Dated: March 2, 2023.

David E. O'Connell,
Captain, U.S. Coast Guard,
Captain of the Port Maryland-National Capital Region.

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